



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of Claims Against the Dealer Bond
of International Autos, Inc., f/k/a Brookfield Motor
Car Company

Case No. TR-99-0034

FINAL DECISION

On October 4, 1999, Kevin Kienzle filed a claim against the motor vehicle dealer bond of International Autos, Inc. The claim was referred to the Division of Hearings and Appeals for hearing. The Administrative Law Judge gave the parties until November 26, 1999, to file any additional information they wished to have considered in issuing a preliminary determination in this matter. On November 12, 1999, Thomas Dexter, General Manager of International Autos, Inc., submitted a letter with additional information regarding the claim. The Administrative Law Judge issued a Preliminary Determination on February 3, 2000. No objections to the Preliminary Determination were received. Pursuant to sec. Trans 140.26(5)(d), Wis. Adm. Code, the Preliminary Determination is adopted as the final decision of the Department of Transportation.

In accordance with secs. 227.47 and 227.53(1)(c), Stats., the PARTIES to this proceeding are certified as follows:

Kevin Kienzle
7975 West Wynbrook Court
Oak Creek, WI 53154

International Autos, Inc.
Attn: Thomas Dexter, General Manger
2400 South 108th Street
West Allis, WI 53227

Capitol Indemnity Corporation
P. O. Box 5900
Madison, WI 53705-0900

FINDINGS OF FACT

1. International Autos, Inc. (Dealer) is licensed by the Wisconsin Department of Transportation as a motor vehicle dealer. The Dealer's facilities are located at 2400 South 108th Street, West Allis, Wisconsin.

2. The Dealer has had a bond in force from February 17, 1998, to the present date. (Bond #715144 from Capitol Indemnity Corporation) The Dealer changed its corporate name from Brookfield Motor Car Company to International Autos, Inc., in August 1998.

3. On March 23, 1998, Kevin Kienzle purchased a 1994 Oldsmobile Bravada, vehicle identification number 1GHDT13W0R0702261, from the Dealer for \$14,312.08 including sales tax and license and registration fees. The Wisconsin Buyers Guide posted on a window of the vehicle at the time Mr. Kienzle purchased it disclosed the vehicle's history as "Personal use." The vehicle was purchased "As Is" with no warranty.

4. After he purchased the vehicle, Mr. Kienzle needed to have numerous repairs made to the vehicle. Sometime in the spring of 1999, Mr. Kienzle noticed logos on the front door of the vehicle that had been removed and waxed over. It was determined that the vehicle had previously been leased by a construction company.

5. On August 29, 1999, Mr. Kienzle filed a complaint against the Dealer with the Wisconsin Department of Transportation (Department). During his investigation of the complaint, the Dealer showed the Department investigator another Wisconsin Buyers Guide completed for the vehicle. The other Wisconsin Buyers Guide disclosed the vehicle's history as "Lease use." This Wisconsin Buyers Guide was signed by Kevin Kienzle.

6. No resolution of Mr. Kienzle's complaint was achieved during the Department's investigation of his complaint. On October 4, 1999, Mr. Kienzle filed a claim against the surety bond of the Dealer. The amount of the claim was \$3,000.00 and is itemized as follows:

DAMAGES CLAIMED	ITEM DESCRIPTION	ITEM AMOUNT
8/17/98 & 8/18/98	Repairs Fuel Filter & Pump	\$ 388.07
5/20/98	Transmission Repairs	\$ 618.61
5/11/98	New Brakes	\$ 157.59
4/11/98	Alignment	\$ 36.96
10/26/98	Replace Windshield—Too Loose	\$ 144.16
Inconvenience of overnight stay while on vacation. Cost of anticipated future repairs because of use for construction. Misrepresentation decrease in trade-in value because of business use.		\$1,654.61
	CLAIM TOTAL	\$3,000.00

7. Although the Dealer has a Wisconsin Buyers Guide signed by Kevin Kienzle which discloses the vehicle's history as "Lease use," the Wisconsin Buyers Guide posted on the window of the vehicle at the time Mr. Kienzle purchased it and the Wisconsin Buyers Guide given to him discloses the vehicle's history as "Personal use." The Dealer's failure to properly disclose the vehicle's use history constitutes a violation of sec. Trans 139.06, Wis. Adm. Code.

8. In his complaint, Mr. Kienzle states he would not have purchased the vehicle if he had been aware that it had previously been leased by a construction company. Accordingly, the cost of the repairs made to the vehicle shortly after Mr. Kienzle purchased the vehicle constitute a loss caused by the Dealer's violation of sec. Trans 139.06, Wis. Adm. Code. A violation of sec. Trans 139.06, Wis. Adm. Code, is, in turn, a violation of sec. 218.01(3)(a)4 and/or 14, Stats.

9. Kevin Kienzle has submitted documentation to support a bond claim of \$1,230.37. The bond claim was filed within three years of the ending date of the period the Capitol Indemnity Corporation bond was in effect and is; therefore, a timely claim.

10. The loss sustained by Mr. Kienzle was caused by an act of the Dealer that would be grounds for the suspension or revocation of its motor vehicle dealer license. Accordingly, this amount of the claim is allowable.

Discussion

The procedure for determining claims against dealer bonds is set forth at Chapter Trans 140, Subchapter II, Wis. Adm. Code. Sec. Trans 140.21(1), Wis. Adm. Code, provides in relevant part:

A claim is an allowable claim if it satisfies each of the following requirements and is not excluded by sub. (2) or (3):

(a) The claim shall be for monetary damages in the amount of an actual loss suffered by the claimant.

(b) The claim arose during the period covered by the security.

(c) The claimant's loss shall be caused by an act of the licensee, or the [licensee's] agents or employees, which is grounds for suspension or revocation of any of the following:

1. A salesperson license or a motor vehicle dealer license, in the case of a secured salesperson or motor vehicle dealer, pursuant to s. 218.01 (3) (a) 1. to 14., 18. to 21., 25. or 27. to 31., Stats.

(d) The claim must be made within 3 years of the last day of the period covered by the security. The department shall not approve or accept any surety bond or letter of credit which provides for a lesser period of protection.

Accordingly, to allow Mr. Kienzle's claim, a finding must be made that the Dealer violated one of the sections of sec. 218.01(3)(c), Stats., listed in sec. Trans 140.21(1)(c)1, Wis. Adm. Code. When the Department's investigator inspected the records of the Dealer, he found two Wisconsin Buyers Guides for the vehicle purchased by Mr. Kienzle in the Dealer's files. One Wisconsin Buyers Guide, signed by Mr. Kienzle, disclosed the vehicle's history as "Lease use." The other Buyers Guide, the one apparently posted on the window of the vehicle at the time Mr. Kienzle purchased it and the one of which Mr. Kienzle had a copy, disclosed the vehicle's history as "Personal use."

The Dealer alleges that the Wisconsin Buyers Guide that disclosed the vehicle's history as "Personal use" was a mistake and was corrected by the other Wisconsin Buyers Guide. This does not appear to be the case, since the Wisconsin Buyers Guide which disclosed the vehicle's history as "Lease use," is dated by the Dealer and the vehicle inspector earlier than the Wisconsin Buyers Guide which disclosed the vehicle's history as "Personal use." Additionally, the Wisconsin Buyers Guide that disclosed the vehicle's history as "Lease use" has a lower odometer reading than the other Wisconsin Buyers Guide. Based on this evidence, it appears that the Wisconsin Buyers Guide which disclosed the vehicle's history as "Personal use" was completed later than the Wisconsin Buyers Guide which disclosed the vehicle's history as "Lease use."

The Wisconsin Buyers Guide which Mr. Kienzle saw and upon which he based his purchase decision failed to accurately disclose the vehicle's use history. The Dealer was aware of the vehicle's history as a leased vehicle as shown by the earlier, correctly completed Wisconsin Buyers Guide. The Dealer's failure to accurately disclose the vehicle's history as a leased vehicle on the Wisconsin Buyers Guide displayed on the vehicle at the time it was purchased by Mr. Kienzle constitutes a violation of sec. Trans 139.06, Wis. Adm. Code, which, in turn, constitutes a violation of sec. 218.01(3)(a)4 and/or 14, Stats.

Mr. Kienzle has filed a claim in the amount of \$3,000.00 against the Dealer's surety bond. In support of this claim he has submitted receipts totally \$1,230.37, for repairs made to the vehicle within approximately seven months of the purchase date of the vehicle. Because Mr. Kienzle indicates that he would not have purchased the vehicle if he had been aware that a construction company had previously leased it, the cost of these repairs constitute a loss caused by the Dealer's violation of sec. Trans 139.06, Wis. Adm. Code. These claims are allowable. In addition to the receipts he submitted, Mr. Kienzle also indicated that he paid \$115.02 to an Oldsmobile dealer in South Dakota to replace a fuel filter. According to Mr. Kienzle's note this repair "didn't solve [the] problem." Mr. Kienzle did not provide a receipt for this fuel filter replacement nor does he explain why the Dealer should be responsible for this repair work which apparently did not solve the problem that Mr. Kienzle was experiencing with the vehicle. This portion of the claim will not be allowed.

Additionally, Mr. Kienzle is claiming \$1,654.61 for a loss that he describes as "inconvenience of overnight stay while on vacation cost of anticipated future repairs because of use for construction, misrepresentation, and decrease in trade-in value because of business use." This portion of the claim will also not be allowed. At this time, any claims for the decrease in

trade-in value for the vehicle because of business use or for the cost of anticipated repairs are speculative. Allowing Mr. Kienzle's claim for the repairs made to the vehicle within seven months of his purchase is adequate compensation for the failure to properly disclose the vehicle's use history. Mr. Kienzle's claim for misrepresentation constitutes punitive damages. Section Trans 140.21(2)(e), Wis. Adm. Code, expressly disallows claims for punitive damages. Finally, Mr. Kienzle claims a loss for inconvenience while on vacation. This portion of the claim is not itemized and no documentation for it was submitted. Accordingly, this portion of the claim is also not allowable.

CONCLUSIONS OF LAW

1. Kevin Kienzle's claim arose on March 23, 1998, the date he purchased the subject vehicle from International Autos, Inc. The surety bond issued to International Autos, Inc., by Capitol Indemnity Corporation covers a one-year period commencing on February 17, 1998. The claim arose during the period covered by the surety bond.

2. Mr. Kienzle's filed a claim against the motor vehicle dealer bond of International Autos, Inc., on October 4, 1999. The bond claim was filed within three years of the last day of the period covered by the surety bond. Pursuant to sec. Trans 140.21(1)(d), Wis. Adm. Code, the claim is timely.

3. Mr. Kienzle's loss was caused by an act of International Autos, Inc., which would be grounds for suspension or revocation of its motor vehicle dealer license. Mr. Kienzle has submitted documentation to support a claim in the amount of \$1,230.32. Pursuant to sec. Trans 140.21(1)(c), Wis. Adm. Code, this portion of the claim is allowable.

4. The Division of Hearings and Appeals has authority to issue the following order.

ORDER

The claim filed by Kevin Kienzle against the motor vehicle dealer bond of International Autos, Inc., is APPROVED in the amount of \$1,230.37. Capitol Indemnity Corporation shall pay Mr. Kienzle this amount for his loss attributable to the actions of International Autos, Inc.

Dated at Madison, Wisconsin on April 13, 2000.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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Madison, Wisconsin 53705-5400
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By: _____
MARK J. KAISER
ADMINISTRATIVE LAW JUDGE

NOTICE

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Division. This notice is provided to insure compliance with sec. 227.48, Stats., and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Division of Hearings and Appeals a written petition for rehearing pursuant to sec. 227.49, Stats. Rehearing may only be granted for those reasons set out in sec. 227.49(3), Stats. A petition under this section is not a prerequisite for judicial review under secs. 227.52 and 227.53, Stats.
2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of secs. 227.52 and 227.53, Stats. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Any petition for judicial review shall name the Division of Hearings and Appeals as the respondent. Persons desiring to file for judicial review are advised to closely examine all provisions of secs. 227.52 and 227.53, Stats., to insure strict compliance with all its requirements.